

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRY SHARP,

Plaintiff,

v.

DEPUTY SMITH, et al.,

Defendants.

No. 2:24-cv-2866 WBS CSK P

ORDER AND FINDINGS AND
RECOMMENDATIONS

I. INTRODUCTION

Plaintiff is a former county prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On February 14, 2025, this Court issued findings and recommendations addressing plaintiff's second amended complaint. (ECF No. 9.) In the findings and recommendations, this Court found that some of the claims raised in the second amended complaint were not potentially colorable and recommended dismissal of these claims. (*Id.*) In response to the findings and recommendations, plaintiff filed a motion for extension of time to file objections, objections, a request for leave to file a third amended complaint and a third amended complaint. (ECF Nos. 10, 11, 12, 13.) For the following reasons, the February 14, 2025 findings and recommendations are vacated, plaintiff's motion for extension of time to file objections is denied as unnecessary and plaintiff's motion to file the third amended complaint is granted. In the instant order, this Court screens the third amended complaint.

1 **II. MOTION TO FILE THIRD AMENDED COMPLAINT**

2 **A. Legal Standard**

3 Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only
 4 with the opposing party’s written consent or the court’s leave. The court should freely give leave
 5 when justice so requires.” Courts must apply this policy “with extreme liberality.” Eminence
 6 Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). The Court has discretion to
 7 grant or deny a request to amend but must provide justification when it denies a request. See
 8 Foman v. Davis, 371 U.S. 178, 182 (1962). “A motion to amend under Rule 15(a)(2) ‘generally

9 shall be denied only upon showing of bad faith, undue delay, futility, or undue prejudice to the

10 opposing party.’” Chudacoff v. Univ. Med. Ctr. of S. Nev., 649 F.3d 1143, 1152 (9th Cir. 2011).

11 “In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to

12 facilitate decisions on the merits, rather than on the pleadings or technicalities.” United States v.

13 Webb, 655 F.2d 977, 979 (9th Cir. 1981).

14 **B. Analysis**

15 For the following reasons, plaintiff’s motion to file the third amended complaint is
 16 granted. On October 16, 2024, plaintiff filed the original complaint. (ECF No. 1.) On November
 17 5, 2024, this Court issued an order screening the original complaint. (ECF No. 4.) In the
 18 November 5, 2024 order, this Court found that some of the claims raised in the original complaint
 19 were potentially colorable. (Id.) This Court granted plaintiff thirty days to inform the Court
 20 whether he intended to proceed on the potentially colorable claims or whether he opted to file an
 21 amended complaint. (Id.)

22 On November 6, 2024, plaintiff filed a first amended complaint. (ECF No. 5.) On
 23 December 4, 2024, plaintiff filed a second amended complaint. (ECF No. 8.) On February 14,
 24 2025, this Court issued findings and recommendations addressing the second amended complaint.
 25 (ECF No. 9.) This Court found that the second amended complaint stated six potentially
 26 colorable claims for relief. (Id.) This Court found that seven of the claims raised in the second
 27 amended complaint were not potentially colorable and recommended that these seven claims be
 28 dismissed. (Id.) Plaintiff was not granted leave to amend. (Id.)

1 On March 10, 2025, plaintiff filed a request to file a third amended complaint and a
 2 proposed third amended complaint. (ECF Nos. 12, 13.) The third amended complaint omits
 3 some of the claims raised in the second amended complaint that this Court found were not
 4 potentially colorable, including claims alleging violations of the Americans with Disabilities Act
 5 (“ADA”) and the right to exercise. (ECF No. 13.) In addition, the third amended complaint
 6 attempts to cure the pleading defects as to the claims raised against defendant Sacramento County
 7 in the second amended complaint pursuant to Monell v. New York City. Dep. of Social Servs.,
 8 436 U.S. 658 (1978). (Id.) Because plaintiff did not name defendant Sacramento County as a
 9 defendant in the original complaint, plaintiff was not previously granted the opportunity to amend
 10 his Monell claims against defendant Sacramento County. For these reasons, this Court finds good
 11 cause to grant plaintiff leave to file the third amended complaint. While plaintiff’s motion for
 12 leave to file the third amended complaint is granted, this Court must still screen the third amended
 13 complaint.

14 Finally, because this Court grants plaintiff’s motion to amend, the February 14, 2025
 15 findings and recommendations addressing plaintiff’s second amended complaint are vacated and
 16 plaintiff’s motion for an extension of time to file objections to these findings and
 17 recommendations is denied as unnecessary.

18 **III. SCREENING STANDARDS**

19 The court is required to screen complaints brought by prisoners seeking relief against a
 20 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 21 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
 22 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
 23 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

24 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 25 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 26 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
 27 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 28 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully

1 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 2 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
 3 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
 4 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
 5 1227.

6 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
 7 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
 8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
 9 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 10 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
 11 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
 12 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.
 13 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the
 14 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.
 15 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
 16 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
 17 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
 18 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
 19 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

20 IV. THIRD AMENDED COMPLAINT

21 Named as defendants are Sacramento County, Dr. Kim Do¹, Dr. Masood, Nurse Gomez,
 22 Supervising Nurse Glaser, Licensed Vocational Nurse Hailey-Currey, Nurse Mossett, Nurse
 23 Akudinobi, Deputy Smith, Sergeant Mazzanti, Deputy Cervetti, Deputy Yang, Deputy Mora,
 24 Deputy Cervantes, Deputy Her, Deputy Gill, Deputy Barrera, Deputy Dhaliwal, Nurse Melissa,
 25 Nurse Tracy, Reema, Nurse Gladys and several doe defendants. (ECF No. 13 at 1-4.)

26 In the body of the third amended complaint, plaintiff identifies additional defendants:

27 ¹ In some sections of the third amended complaint, plaintiff refers to defendant Kim Do as
 28 defendant Do Kim.

1 Miring, Kaur, Zaragoza and Ballesteros. (*Id.* at 14, 18, 31 32.) In the request to file the third
 2 amended complaint, plaintiff states that he is striking defendants Miring, Kaur, Zaragoza and
 3 Ballesteros. (ECF No. 12 at 3.) Accordingly, this Court disregards the allegations made against
 4 defendants Miring, Kaur, Zaragoza and Ballesteros in the third amended complaint.

5 Plaintiff's third amended complaint raises the following legal claims: 1) alleged violation
 6 of plaintiff's constitutional right to adequate medical care (claims one, two, four, seven);
 7 2) alleged violation of plaintiff's right to communicate (claim three); 3) alleged retaliation (claims
 8 five and six); and 4) excessive solitary confinement (claim eight). (ECF No. 13 at 44-54.) As
 9 relief, plaintiff seeks money damages and declaratory relief. (*Id.* at 54.)

10 Plaintiff appears to have been a pretrial detainee at the time of the alleged deprivations.

11 **A. Claims One, Two, Four, Seven: Alleged Inadequate Medical Care**

12 1. Legal Standards

13 a. *Legal Standard for Claim Alleging Inadequate Medical Care*

14 A claim for a violation of a pretrial detainee's right to adequate medical care arises under
 15 the Fourteenth Amendment rather than the Eighth Amendment. See Gordon v. County of
 16 Orange, 888 F.3d 1118, 1122, 1125 n.4 (9th Cir. 2018). The claim is evaluated under an
 17 objective deliberate indifference standard.

18 [T]he elements of a pretrial detainee's medical care claim against an
 19 individual defendant under the due process clause of the Fourteenth
 20 Amendment are: (i) the defendant made an intentional decision with
 21 respect to the conditions under which the plaintiff was confined;
 22 (ii) those conditions put the plaintiff at substantial risk of suffering
 23 serious harm; (iii) the defendant did not take reasonable available
 measures to abate that risk, even though a reasonable official in the
 circumstances would have appreciated the high degree of risk
 involved—making the consequences of the defendant's conduct
 obvious; and (iv) by not taking such measures, the defendant caused
 the plaintiff's injuries.

24 *Id.* at 1125.

25 For the third element, the defendant's conduct must be objectively unreasonable, "a test
 26 that will necessarily turn[] on the facts and circumstances of each particular case." *Id.* (citations
 27 and internal quotation marks omitted). The four-part test articulated in Gordon requires the
 28 plaintiff to prove more than negligence, but less than subjective intent—something akin to

1 reckless disregard. See id.

2 *b. Legal Standard for Municipal Liability*

3 Municipalities cannot be held vicariously liable under Section 1983 for the actions of their
4 employees. See Monell, 436 U.S. at 694. The Ninth Circuit has recognized four theories for
5 establishing municipal liability under Monell: “(1) an official policy; (2) a pervasive practice or
6 custom; (3) a failure to train, supervise, or discipline; or (4) a decision or act by a final
7 policymaker.” Horton by Horton v. City of Santa Maria, 915 F.3d 592, 602–03 (9th Cir. 2019).
8 To properly plead a Monell claim based on an unconstitutional policy, plaintiff must demonstrate
9 that 1) he possessed a constitutional right of which he was deprived; 2) the municipality had a
10 policy; 3) such policy amounts to deliberate indifference to plaintiff’s constitutional right; and
11 4) the policy is the moving force behind the constitutional violation. See Plumeau v. Sch. Dist.
12 No. 40 County. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997).

13 2. Claim One

14 Plaintiff alleges denial of adequate medical care by defendants Sacramento County, Kim
15 Do and Gomez. (ECF No. 13 at 44-46.) Plaintiff alleges that defendant Kim Do denied plaintiff
16 adequate medical care by failing to follow the aftercare orders issued by Kaiser Permanente
17 Hospital, denying plaintiff access to assistive devices, and denying plaintiff access to showers and
18 instead ordering birdbaths. (Id. at 10-19.) By assistive devices, plaintiff appears to refer to his
19 Philadelphia collar. (Id.) Plaintiff alleges that defendant Gomez denied plaintiff adequate
20 medical care by ordering bird baths. (Id.) This Court finds that claim one states potentially
21 colorable Fourteenth Amendment inadequate medical care claims against defendants Kim Do and
22 Gomez.

23 Plaintiff alleges that defendant Sacramento County maintained policies or customs that led
24 to the deprivations alleged in claim one. (Id. at 45.) Plaintiff also alleges that defendant
25 Sacramento County’s failure to properly train, supervise, discipline and hire staff led to the
26 deprivations alleged in claim one. (Id. at 45.) In the third amended complaint, plaintiff refers to
27 the consent decree issued in Mays v. Sacramento, No. 2:18-cv-2081 TLN CSK (E.D. Cal.)

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1 (“Mays”).² (Id. at 5-6.) Plaintiff alleges that since issuance of the Mays consent decree, there
 2 have been no effective measures taken to make the Sacramento County Jail come into compliance
 3 with federal requirements for the protection of detainee constitutional rights. (Id. at 6.) Plaintiff
 4 also refers to stories from various media regarding alleged mistreatment of inmates at the
 5 Sacramento County Jail including two stories regarding alleged inadequate medical care. (Id. at
 6 6-8.) Plaintiff refers to an article allegedly stating that in 2023, an inmate likely died from
 7 alcohol withdrawal while being processed into the Sacramento County Jail after medical staff at
 8 the Jail failed to provide adequate medical care. (Id. at 6.) Plaintiff refers to an article allegedly
 9 stating that in October 2019, a woman filed a claim alleging that medical staff at the Sacramento
 10 County Jail failed to treat her broken foot. (Id. at 8.) Plaintiff also refers to sections of the Mays
 11 consent decree regarding the establishment of specialized medical units (Id. at 9.)

12 In the third amended complaint, plaintiff pleads no specific facts demonstrating how
 13 defendant Sacramento County’s alleged failure to train, supervise or discipline its employees led
 14 to the deprivations alleged in claim one. Plaintiff also fails to identify any specific policy or
 15 custom that led to the deprivations alleged in claim one. Plaintiff’s vague and conclusory
 16 allegations against defendant Sacramento County in claim one do not state potentially colorable
 17 claims for relief based on these theories of municipal liability. See Dougherty v. City of Covina,
 18 654 F.3d 892, 900-01 (9th Cir. 2011) (affirming dismissal of municipal and supervisor liability
 19 claims which “lack[ed] any factual allegations that would separate them from the ‘formulaic
 20 recitation of a cause of action’s elements’” deemed insufficient by the United States Supreme
 21 Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

22 Plaintiff’s Monell claims may not be based on the two articles referenced in the third
 23 amended complaint regarding alleged inadequate medical care received by inmates in the
 24 Sacramento County Jail. This Court observes that, according to plaintiff, neither article states that
 25 the claims of alleged inadequate medical care discussed in the articles were proven. In addition, a
 26 few “isolated or sporadic incidents” are not enough to prove a municipality has an
 27

28 ² Mays is a class action lawsuit challenging conditions in the Sacramento County Jail.

1 unconstitutional custom or practice. See Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). A
 2 practice or custom must have “sufficient duration, frequency and consistency” that it has “become
 3 a traditional method of carrying out policy.” Id. A “policy of inaction” can amount to an
 4 unconstitutional policy. See Connick v. Thompson, 563 U.S. 51, 61 (2011). The pattern of
 5 incidents must reflect “similar constitutional violations.” Id. at 62. The two instances of alleged
 6 inadequate medical care discussed in the articles, related to failure to treat alcohol withdrawal and
 7 a broken foot, do not demonstrate a policy or custom by defendant Sacramento County to provide
 8 the inadequate medical care alleged by plaintiff in claim one.

9 Plaintiff also appears to claim that defendant Sacramento County is in violation of the
 10 Mays consent decree. The Mays consent decree states, in relevant part,

11 The Remedial Plan is designed to meet the minimum level of mental
 12 and medical health necessary to fulfill Defendants’ obligations under
 13 the Eighth and Fourteenth Amendments, to avoid the unlawful use
 14 of segregated or restrictive housing in the jails, as well as to ensure
 non-discrimination against people with disabilities in the areas
 addressed by the Remedial Plan, as required by the ADA and Section
 504 of the Rehabilitation Act.

15 Mays, No. 2:18-cv-2081, ECF No. 85-1, ¶ 10.

16 On August 13, 2019, the Court approved the consent decree in Mays. Mays, No. 2:18-cv-
 17 2081, ECF No. 88.

18 To the extent plaintiff raises a claim against defendant Sacramento County for allegedly
 19 violating the Mays consent decree, the alleged violation of policies adopted pursuant to the Mays
 20 consent decree does not itself support a Section 1983 claim; plaintiff must identify a violation of
 21 his constitutional rights. See Yandell v. Washington, 2021 WL 3674729, at *4 (E.D. Cal. Aug.
 22 19, 2021), findings and recommendations adopted, 2021 WL 4355612 (E.D. Cal. Sept. 24, 2021).

23 Accordingly, for the reasons discussed above, this Court recommends that the claims
 24 against defendant Sacramento County in claim one be dismissed.

25 3. Claim Two

26 Plaintiff alleges that defendant Sacramento County and Hailey-Currey provided
 27 inadequate medical care. (ECF No. 13 at 46-47.) Plaintiff alleges that defendant Hailey-Currey
 28 provided inadequate medical care when she improperly removed plaintiff’s cervical collar and

1 restored it incorrectly. (Id. at 19-21.) This Court finds that claim two states a potentially
2 colorable Fourteenth Amendment inadequate medical care claim against defendant Hailey-
3 Currey.

4 Plaintiff alleges that defendant Sacramento County maintained policies or customs that led
5 to the deprivations alleged in claim two. (Id. at 46.) Plaintiff also alleges that defendant
6 Sacramento County's failure to properly train, supervise and discipline its employees led to the
7 deprivations alleged in claim two. (Id. at 46-47.) Plaintiff pleads no specific facts in support of
8 either of these theories of municipal liability. For this reason, this Court finds that plaintiff does
9 not state potentially colorable claims against defendant Sacramento County based on these
10 theories. See Dougherty, 654 F.3d at 900-01. In claim two, plaintiff may also be raising a
11 Monell claim against defendant Sacramento County based on the two articles referenced in the
12 third amended complaint regarding alleged inadequate medical care received by inmates in the
13 Sacramento County Jail. In claim two, plaintiff may also be arguing that defendant Sacramento
14 County violated the Mays consent decree. Claims based on these theories of liability fail for the
15 same reasons discussed above in the section addressing claim one against defendant Sacramento
16 County. Accordingly, this Court recommends that the claims raised against defendant
17 Sacramento County in claim two be dismissed.

18 4. Claim Four

19 Plaintiff alleges a violation of his right to adequate medical care against defendants
20 Sacramento County, Masood, Mossett, Akudinobi, Glaser, Reema and Gladys. (ECF No. 13 at
21 48-49.) Claim four appears to be based on plaintiff's allegations that these defendants acted to
22 have plaintiff prematurely transferred out of the medical unit and that defendant Masood ordered
23 plaintiff to alternate wearing different C collars, in violation of the aftercare orders issued by
24 Kaiser Permanente Hospital. (Id. at 26-31.) This Court finds that claim four states potentially
25 colorable claims for violation of plaintiff's Fourteenth Amendment right to adequate medical care
26 on these grounds against defendants Masood, Mossett, Akudinobi, Glaser, Reema and Gladys.

27 Plaintiff alleges that defendant Sacramento County maintained policies or customs that led
28 to the deprivations alleged in claim four. (Id. at 49.) Plaintiff alleges that defendant Sacramento

1 County's failure to properly hire, discipline, train or supervise medical staff led to the
2 deprivations alleged in claim four. (Id.) Plaintiff pleads no specific facts in support of either of
3 these theories of liability of municipal liability. For this reason, this Court finds that plaintiff
4 does not state potentially colorable claims against defendant Sacramento County based on these
5 theories. See Dougherty, 654 F.3d at 900-01. In claim four, plaintiff may also be raising a
6 Monell claim against defendant Sacramento County based on the two articles referenced in the
7 third amended complaint regarding alleged inadequate medical care received by inmates in the
8 Sacramento County Jail. In claim four, plaintiff may also be arguing that defendant Sacramento
9 County violated the Mays consent decree. Claims based on these theories of liability fail for the
10 same reasons discussed above in the section addressing claim one against defendant Sacramento
11 County. Accordingly, this Court recommends that the claims raised against defendant
12 Sacramento County in claim four be dismissed.

13 5. Claim Seven

14 Plaintiff alleges a violation of his right to adequate medical care against defendants
15 Sacramento County, Dhaliwal, Gil, Her and Cervantes. (ECF No. 13 at 52.) Plaintiff alleges that
16 when plaintiff was sent from Kaiser Permanente Hospital to the Sacramento County Jail, the
17 aftercare orders included a bottom bunk, bottom tier housing, an extra mattress and an extra
18 blanket. (Id. at 12.) Kaiser Permanente Hospital sent the aftercare orders to the Sacramento
19 County Jail. (Id. at 13.) Plaintiff alleges that around midnight on August 13, 2023, when
20 defendants Dhaliwal and Gil transferred plaintiff to the disciplinary housing unit, plaintiff
21 informed defendant Dhaliwal of plaintiff's mobility impairments, injuries to his neck and the
22 bullet in plaintiff's spine. (Id. at 41.) Plaintiff requested his housing accommodations and asked
23 defendant Dhaliwal to contact the "24 hour" to confirm these accommodations. (Id. at 42.)
24 Plaintiff alleges that he was denied his accommodations of an extra blanket, an extra mattress,
25 lower tier and lower bunk. (Id.) Plaintiff alleges that defendant Dhaliwal stated that defendant
26 Gil could not verify these accommodations with the medical staff. (Id.) Plaintiff informed
27 defendants Her and Cervantes of his required accommodations. (Id.) Plaintiff was placed in an
28 upper bunk in an upper tier and was not initially provided a mattress. (Id.) Defendant Her failed

1 to instruct the inmate in the cell into which plaintiff was moved that the inmate would be required
 2 to move to the upper bunk. (Id.) When making the cell move, plaintiff was not able to bring his
 3 mattress without making two trips. (Id.) As a result, plaintiff was not allowed to bring his
 4 mattress to the new cell. (Id.) Plaintiff had to sleep on the metal bed frame of the upper level
 5 bunk, as he did not receive a mattress, for four to eight hours. (Id.) The denial of these
 6 accommodations caused mild to severe pain and stress to plaintiff's spine and set back plaintiff's
 7 recovery from his injuries. (Id.)

8 Although plaintiff alleges that defendant Dhaliwal stated that defendant Gil could not
 9 verify plaintiff's accommodations with the medical staff, this Court finds that claim seven states a
 10 potentially colorable claim for violation of plaintiff's right to adequate medical care against
 11 defendants Dhaliwal, Gil, Her and Cervantes for their alleged failure to provide plaintiff with the
 12 accommodations.³ Plaintiff also states a potentially colorable claim for violation of plaintiff's
 13 right to adequate medical care against these defendants based on their placement of plaintiff in a
 14 cell with no mattress.

15 Plaintiff alleges that defendant Sacramento County maintained policies or customs that led
 16 to the deprivations alleged in claim seven. (Id. at 52.) Plaintiff alleges that defendant Sacramento
 17 County's alleged failure to train, supervise and discipline their staff led to the deprivations alleged
 18 in claim seven. (Id. at 53.) Plaintiff pleads no specific facts in support of either of these theories
 19 of municipal liability. For this reason, this Court finds that plaintiff does not state a potentially
 20 colorable claim against defendant Sacramento County based on these theories. See Dougherty,
 21 654 F.3d at 900-01. In claim seven, plaintiff may also be raising a Monell claim against
 22 defendant Sacramento County based on the two articles referenced in the third amended
 23 complaint regarding alleged inadequate medical care provided to inmates at the Sacramento
 24 County Jail. In claim seven, plaintiff may also be arguing that defendant Sacramento County
 25 violated the Mays consent decree. Claims based on these theories of liability fail for the same

26 ³ Presumably, plaintiff had these accommodations in the cell defendants Dhaliwal and Gil
 27 transferred plaintiff from to the disciplinary unit. Plaintiff also alleges that the aftercare orders,
 28 containing these accommodations, were in plaintiff's medical records at the Sacramento County
 Jail.

1 reasons discussed above in the section addressing claim one against defendant Sacramento
2 County. Accordingly, this Court recommends that the claims raised against defendant
3 Sacramento County in claim seven be dismissed.

4 **B. Claim Three: Alleged Violation of Right to Communicate**

5 The First Amendment protects “the right to communicate with persons outside prison
6 walls.” Valdez v. Rosenblum, 302 F.3d 1039, 1048 (9th Cir. 2002). “Use of a telephone
7 provides a *means* of exercising this right.” Id. (emphasis in original).

8 Plaintiff alleges a violation of his right to communicate against doe defendants 1-4 based
9 on events occurring from October 17, 2022 to October 21, 2022 in the 2 East Medical floor.
10 (ECF No. 13 at 47-48.) Plaintiff alleges that during this time, he was unable to make outgoing
11 telephone calls because doe defendants 1-4 “enabled the outgoing call restriction feature denying
12 [plaintiff] access to communication outside of prison walls.” (Id. at 22.) This Court finds that
13 claim three states a potentially colorable claim for violation of plaintiff’s First Amendment right
14 to communicate against doe defendants 1-4.

15 Unnamed individuals cannot be served. The Ninth Circuit has held that where identity of
16 a defendant is unknown prior to the filing of a complaint, the plaintiff should be given an
17 opportunity through discovery to identify the unknown defendants unless it is clear that discovery
18 would not uncover the identities, or that the complaint would be dismissed on other grounds. See
19 Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (citing Gillespie v. Civiletti, 629
20 F.2d 637, 642 (9th Cir. 1980)). Following adoption of these findings and recommendations,
21 plaintiff is granted ninety days to discover the identities of doe defendants 1-4 and to substitute
22 these defendants’ actual names by filing a “notice of substitution.” See Wakefield, 177 F.3d at
23 1163. If plaintiff does not file a notice of substitution within that time, the Court will recommend
24 dismissal of claim three against these defendants without prejudice.

25 **C. Claims Five and Six: Alleged Retaliation**

26 **1. Legal Standard for Retaliation**

27 A viable claim of First Amendment retaliation entails five basic elements: 1) an assertion
28 that a state actor took some adverse action against an inmate 2) because of 3) the inmate’s

1 protected conduct, and 4) the adverse action chilled the inmate's exercise of his First Amendment
 2 rights and 5) did not reasonably advance a legitimate penological purpose. See Rhodes v.
 3 Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005); see also Wilson v. Pima County Jail, 256 Fed.
 4 App'x 949, 950 (9th Cir. 2007) (applying Rhodes test to pretrial detainee's retaliation claim).

5 2. Claim Five

6 Plaintiff alleges that defendants Cervetti, Smith, Barrera, Yang and Mora retaliated
 7 against plaintiff. (ECF No. 13 at 49-51.) In support of claim five, plaintiff alleges that while he
 8 was housed at the Rio Consumnes Correctional Center ("RCCC") Medical Housing Unit
 9 ("MHU"), defendants failed to provide plaintiff with adequate "out of cell" time and access to
 10 showers. (Id. at 36-39.) After defendant Cervetti denied plaintiff a daily shower on March 15,
 11 2023, plaintiff wrote a grievance regarding defendants Cervetti, Yang and Mora and their alleged
 12 failure to provide adequate "out of cell" time and access to showers. (Id. at 39.) On March 16,
 13 2023, defendant Masood received a staff request to determine plaintiff's housing. (Id.) This
 14 request was an informal request to medically clear plaintiff. (Id.) Plaintiff claims that
 15 Sacramento County Deputy Sheriffs, like defendants, do not inquire about housing until a
 16 plaintiff is medically cleared. (Id.) Less than 12 hours after plaintiff filed his grievance, a
 17 doctor's appointment for plaintiff was scheduled to determine plaintiff's housing. (Id.) Plaintiff
 18 was later discharged from the medical housing unit. (Id.)

19 Plaintiff claims that defendants Cervetti, Smith, Barerra, Yang and Mora requested that
 20 plaintiff be medically cleared, in apparent violation of Sacramento County Jail policy, in
 21 retaliation for plaintiff filing the grievance on March 15, 2023. (Id. at 40.) Plaintiff claims that
 22 he would not have been medically cleared but for defendants' coercion and use of influence to
 23 "accomplice their malice objective." (Id.) Plaintiff claims that he would not have been evaluated
 24 for medical clearance from the MHU but for the actions of defendants. (Id.)

25 As stated above, to state a potentially colorable retaliation claim, a prisoner must show
 26 that the alleged retaliatory action advanced no legitimate penological interest. See Rhodes, 408
 27 F.3d at 567-68. Here, the alleged retaliatory action was defendants' alleged request for plaintiff
 28 to be evaluated by medical staff for transfer out of the MHU. According to plaintiff, only medical

1 staff can initiate requests for transfers out of the MHU. However, plaintiff does not claim that he
2 should not have been discharged from the MHU in response to defendants' request. Therefore,
3 defendants' request advanced the legitimate penological goal of removing prisoners from the
4 MHU who no longer needed to be housed in the MHU. Accordingly, because defendants' alleged
5 referral of plaintiff to medical staff for evaluation of whether plaintiff qualified for continued
6 housing in the MHU advanced a legitimate penological goal, plaintiff fails to state a potentially
7 colorable retaliation claim against defendants Cervetti, Smith, Barrera, Yang and Mora.
8 Accordingly, claim five should be dismissed.

9 3. Claim Six

10 Plaintiff alleges that defendants Sacramento County, Smith, Mazzanti and Melissa
11 retaliated against plaintiff for filing grievances by transferring plaintiff to cell 37 on December 6,
12 2022 and December 13, 2022. (ECF No. 13 at 51-52, 33-36.) Plaintiff alleges that cell 37 did not
13 have the accommodations plaintiff required for his medical conditions. (Id.) This Court finds
14 that plaintiff states a potentially colorable retaliation claim against defendants Smith, Mazzanti
15 and Melissa based on plaintiff's transfer to cell 37.

16 The third amended complaint contains no allegations linking defendant Sacramento
17 County to the deprivations alleged in claim six. (Id.) The Civil Rights Act under which this
18 action was filed provides as follows:

19 Every person who, under color of [state law] . . . subjects, or causes
20 to be subjected, any citizen of the United States . . . to the deprivation
of any rights, privileges, or immunities secured by the Constitution .
21 . . shall be liable to the party injured in an action at law, suit in equity,
or other proper proceeding for redress.

22 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
23 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
24 Monell v. Department of Social Servs., 436 U.S. 658, 692 (1978); Rizzo v. Goode, 423 U.S. 362,
25 371-72 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within
26 the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
27 omits to perform an act which he is legally required to do that causes the deprivation of which
28 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

1 All claims against defendant Sacramento County made in claim six should be dismissed
2 because defendant Sacramento County is not linked to the alleged deprivations.

3 **D. Claim Eight: Alleged Excessive Solitary Confinement**

4 Plaintiff raises a claim for excessive solitary confinement against defendants Sacramento
5 County, Her, Cervantes and does 5-6. (ECF No. 13 at 53.) Plaintiff alleges that plaintiff was to
6 be housed in solitary confinement from August 14, 2023 to August 19, 2023. (Id. at 43.) On
7 August 19, 2023, plaintiff was not released from solitary confinement by doe defendants 5 and 6.
8 (Id.) Plaintiff told doe defendants 5 and 6 that plaintiff was supposed to be released and they told
9 plaintiff they would look into it. (Id.) Plaintiff appears to claim that only defendants Cervantes,
10 Her and does 5 and 6 had the power to move plaintiff out of solitary confinement. (Id. at 44.) On
11 August 20, 2023 at midnight, plaintiff was moved out of the disciplinary housing unit, i.e.,
12 solitary confinement. (Id.) Plaintiff alleges that defendants Cervantes, Her and does 5 and 6
13 violated plaintiff's constitutional rights by causing plaintiff to be held in solitary confinement for
14 an additional 24 hours. (Id. at 53.)

15 When a pretrial detainee challenges conditions of his confinement, the proper inquiry is
16 whether the conditions amount to punishment in violation of the Due Process Clause of the
17 Fourteenth Amendment. See Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979). "To constitute
18 punishment, a government action must (i) harm a detainee and (ii) be intended to punish him."
19 Houston v. Maricopa County, 116 F.4th 935, 940 (9th Cir. 2024). If a particular condition or
20 restriction of pretrial detention is reasonably related to a legitimate governmental objective, it
21 does not, without more, amount to punishment. See Bell, 441 U.S. at 539.

22 Plaintiff fails to plead sufficient facts linking defendants Her and Cervantes to the claim
23 that plaintiff was wrongly held in solitary confinement 24 hours after his release time. While
24 plaintiff alleges that defendants Her and Cervantes had the power to release plaintiff from solitary
25 confinement, plaintiff pleads no facts demonstrating that defendants Her and/or Cervantes knew
26 that plaintiff had not been released from solitary confinement when he should have been. If
27 defendants Her and/or Cervantes did not know that plaintiff was wrongfully detained in solitary
28 confinement, they could not have violated plaintiff's constitutional rights by failing to release

1 plaintiff from solitary confinement. For these reasons, claim eight against defendants Her and
2 Cervantes should be dismissed.

3 Plaintiff's claim that he was held in solitary confinement 24 hours after his release time
4 after plaintiff told doe defendants 5 and 6 that he should be released states a potentially colorable
5 Fourteenth Amendment claim against doe defendants 5 and 6. As with the doe defendants named
6 in claim three, following the adoption of these findings and recommendations, plaintiff is granted
7 ninety days to discover the identities of doe defendants 5 and 6. If plaintiff does not file a notice
8 of substitution within that time, the Court will recommend dismissal of claim eight against these
9 defendants without prejudice.

10 Plaintiff alleges that defendant Sacramento County knew of the abuses of excessive
11 solitary confinement via the Mays class action. (ECF No. 13 at 54.) Plaintiff alleges that the
12 failure of defendant Sacramento County to act coupled with its awareness of the problem via
13 Mays of excessive solitary confinement led to the deprivations alleged in claim eight. (*Id.*) As
14 discussed above, the Mays consent decree addresses the unlawful use of segregated or restrictive
15 housing in the Sacramento County Jail. See Mays, No. 2:18-cv-2081, ECF No. 85-1, ¶ 10.
16 Plaintiff appears to claim that his being held in solitary confinement 24 hours after his release
17 time violated the Mays consent decree. As discussed above, the alleged violation of the Mays
18 consent decree does not itself support a Section 1983 claim. See Yandell, 2021 WL 3674729, at
19 *4.

20 Plaintiff also claims that the deprivations alleged in claim eight occurred as a result of the
21 failure of defendant Sacramento County to properly train, supervise and discipline staff. (ECF
22 No. 13 at 54.) Plaintiff pleads no specific facts in support of his claim that the deprivations
23 alleged in claim eight were caused by defendant Sacramento County's alleged failure to properly
24 train, supervise and discipline staff. For this reason, this Court finds that plaintiff does not state a
25 potentially colorable claim against defendant Sacramento County based on this theory of
26 municipal liability. See Dougherty, 654 F.3d at 900-01. Accordingly, for the reasons discussed
27 above, the claims raised against defendant Sacramento County in claim eight should be
28 dismissed.

1 **E. Defendant Tracy, RN**

2 The third amended complaint contains no claims against defendant Tracy, RN.
3 Accordingly, defendant Tracy, RN should be dismissed as this defendant is not linked to the
4 alleged deprivations. See Monell, 436 U.S. at 692.

5 **V. CONCLUSION**

6 As discussed above, this Court finds that plaintiff's third amended complaint states the
7 following potentially colorable claims: 1) claim one alleging that defendant Kim Do violated
8 plaintiff's Fourteenth Amendment right to adequate medical care by a) failing to provide plaintiff
9 with a Philadelphia collar; b) denying plaintiff access to showers and instead ordering birdbaths;
10 and c) disregarding the aftercare orders issued by Kaiser Permanente Hospital; 2) claim one
11 alleging that defendant Gomez violated plaintiff's Fourteenth Amendment right to adequate
12 medical care by denying plaintiff access to showers and instead providing plaintiff with birdbaths;
13 3) claim two alleging that defendant Hailey-Currey violated plaintiff's Fourteenth Amendment
14 right to adequate medical care by forcefully removing plaintiff's cervical collar and incorrectly
15 replacing the cervical collar to plaintiff's neck; 4) claim three against doe defendants 1-4 alleging
16 violation of plaintiff's right to communicate; 5) claim four alleging that defendants Masood,
17 Mossett, Akudinobi, Glaser, Reema and Gladys violated plaintiff's Fourteenth Amendment right
18 to adequate medical care by acting to have plaintiff prematurely transferred out of the medical
19 unit; 6) claim four alleging that defendant Masood violated plaintiff's Fourteenth Amendment
20 right to adequate medical care by ordering plaintiff to alternate wearing different C collars in
21 violation of the aftercare orders; 7) claim six alleging that defendants Smith, Mazzanti and
22 Melissa retaliated against plaintiff for filing grievances by housing plaintiff in cell 37; 8) claim
23 seven alleging that defendants Dhaliwal, Gil, Her and Cervantes violated plaintiff's Fourteenth
24 Amendment right to adequate medical care by failing to provide plaintiff with a bottom bunk,
25 bottom tier housing, an extra blanket and extra mattress when they transferred plaintiff to the
26 disciplinary unit and by placing plaintiff in a cell with no mattress; and 9) claim eight alleging
27 excessive solitary confinement in violation of the Fourteenth Amendment against doe defendants
28 5-6.

1 For the reasons discussed above, this Court finds that the following claims raised in the
2 third amended complaint are not potentially colorable: 1) the claims raised against defendant
3 Sacramento County in claims one, two, four, six, seven and eight; 2) claim five alleging
4 retaliation against defendants Cervetti, Smith, Barrera, Yang and Mora; 3) claim eight alleging
5 excessive solitary confinement against defendants Her and Cervantes; and 4) all claims against
6 defendant Tracy, RN.

7 Plaintiff has already amended his complaint multiple times. Considerable court resources
8 have been spent reviewing plaintiff's complaints. For these reasons, and because it is clear that
9 plaintiff cannot cure the pleadings defects discussed above, **no further amendments of**
10 **plaintiff's complaint are permitted.** See Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
11 (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir. 2000) (en banc) ("A district
12 court should not dismiss a pro se complaint without leave to amend unless 'it is absolutely clear
13 that the deficiencies in the complaint cannot be cured by amendment.'"). Further amended
14 complaints filed by plaintiff will be stricken. Following the district court's adoption of these
15 findings and recommendations, this Court will provide plaintiff with the documents necessary for
16 service of his potentially colorable claims.

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. The findings and recommendations filed February 14, 2025 (ECF No. 9) are vacated;
19 2. Plaintiff's motion for an extension of time to file objections to the February 14, 2025
20 findings and recommendations (ECF No. 10) is denied as unnecessary;
21 3. Plaintiff's motion for leave to file a third amended complaint (ECF No. 12) is granted;
22 and

23 IT IS HEREBY RECOMMENDED that the following claims raised in the third amended
24 complaint be dismissed: 1) the claims raised against defendant Sacramento County in claims one,
25 two, four, six, seven and eight; 2) claim five alleging retaliation against defendants Cervetti,
26 Smith, Barrera, Yang and Mora; 3) claim eight alleging excessive solitary confinement against
27 defendants Her and Cervantes; and 4) all claims against defendant Tracy, RN.

28 These findings and recommendations are submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
2 after being served with these findings and recommendations, plaintiff may file written objections
3 with the court and serve a copy on all parties. Such a document should be captioned
4 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
5 failure to file objections within the specified time may waive the right to appeal the District
6 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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8 Dated: November 03, 2025

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CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE